



No. 49

November 3, 2003

## **S. 1753 - National Consumer Credit Reporting System Improvement Act of 2003**

Calendar No. 312

*Reported on October 17, 2003 by the Senate Committee on Banking, Housing, and Urban Affairs as an original bill, unanimously by voice vote; S. Rept. 108-166.*

### **Noteworthy**

- A unanimous consent agreement (reached on October 28) provides that the Senate may proceed to the consideration of S. 1753, the National Consumer Credit Reporting System Improvement Act of 2003 not before November 3, 2003 and that it be considered under the following limitation: that first-degree amendments be limited to those itemized in the agreement (see pp. 8-9 of this Legislative Notice) and that they be subject to relevant second degree amendments.
- S. 1753 would permanently extend the preemption provisions in the Fair Credit Reporting Act (FCRA) of 1970 to assure national credit reporting standards. The bill also increases consumers' access to credit reports, improves the accuracy of such reports, helps to thwart identity theft, and enables consumers to "opt-out" of commercial solicitations.
- A Managers' Amendment in the form of a substitute bill will be offered by Senators Shelby and Sarbanes, making technical and other changes to the proposed legislation (see p. 5 for further information).
- On September 10, by a vote of 392-30, the House passed a similar bill, H.R. 2622, the Fair and Accurate Transactions Act of 2003. [For details, see CRS's RL32121, "Fair Credit Reporting Act: A Comparison of the House and Senate Legislation."]

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## **Highlights**

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- In addition to the provisions listed on page one of this Notice, the bill requires the Federal Trade Commission (FTC) to prepare a summary of rights for victims of fraud or identity theft and for consumers who want to obtain or dispute information contained in consumer credit reports. The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission (FTC) also would be responsible for developing guidelines and regulations regarding identity theft and credit reporting, as well as procedures and forms for consumers to use when reporting identity theft to creditors and credit-reporting agencies.
- The bill allows consumers to request to receive a free, annual credit report that will include data from all three credit reporting agencies; it would be provided within 15 days from the date the consumer, using mail or a specified Internet web site, requested it.
- The bill also establishes a “Financial Literacy and Education Commission” to improve public understanding of consumer finance and to alert consumers to the availability and significance of credit reports and credit scores.

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## **Background**

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The Fair Credit Reporting Act (FCRA) of 1970 laid the groundwork for the consumer credit market in the United States. FCRA’s statutory framework governs much of this market’s operation (the compilation and sharing of credit information) and has allowed the market for consumer credit to grow as fast, and orderly, as it has over the past 30 years. According to the Federal Reserve, total outstanding U.S. consumer credit stood at \$1.96 trillion in August of 2003, an increase of 40 percent since 1998.

In 1996, Congress passed amendments to the FCRA that attempted to improve the law by reducing the amount of inaccurate information contained in consumers’ credit reports. It also preempted state credit reporting laws and established a national standard for the form and content of certain consumer disclosures and pre-screening activities; the procedures for consumers to dispute the accuracy of consumer reports; the duties of a person who takes adverse action; the contents of consumer reports; furnisher responsibilities; and the sharing of information amongst affiliated entities.

To induce Congressional review of the 1996 amendments, the state preemption provision was scheduled to expire on January 1, 2004, which has prompted action on S. 1753 and on the House bill, H.R. 2622. In addition to extending permanently the preemption of state laws relating to credit reporting, S. 1753 seeks to make several

improvements to existing law, attempts to increase consumers' financial literacy, and confronts the growing problem of identity theft.

## **Bill Provisions**

### **TITLE I – IDENTITY THEFT PREVENTION AND CREDIT HISTORY RESTORATION**

#### ***SUBTITLE A – IDENTITY THEFT PREVENTION***

This Subtitle adds a new section to FCRA that designates three different circumstances in which consumers can direct national consumer reporting agencies to attach a “fraud alert” (or, in the case of active-duty military consumers, an “active duty alert”) to their consumer reports. Both of the aforementioned terms are defined in Section 111, and require credit agencies to obtain authorization from consumers before establishing new credit or increasing a credit limit. The three circumstances for the fraud alerts are as follows:

1. A national consumer reporting agency shall include a fraud alert in a consumer's file for at least 90 days upon the request of a consumer who asserts in “good faith” that he or she has been or is about to become a victim of fraud or related crime.
2. A national consumer reporting agency shall include a fraud alert in a consumer's file for a seven-year period upon the request of a consumer who submits an identity theft report, which is also defined in Section 111. Consumers who have made requests under this section are also to be removed from any lists used to make prescreened offers of credit or insurance for seven years.
3. For active-duty military consumers, a national consumer reporting agency shall include an “active duty alert” in the consumer's file for at least a year upon the request of the active-duty member. Those who place alerts in their files under this section are excluded from eligibility for prescreened offers of credit or insurance for a year.

The Subtitle also requires businesses that accept credit or debit cards to truncate the card account numbers or the expiration dates on any electronically printed receipts to limit opportunities for identity thieves to “pick off” card account information. These requirements are phased in to give businesses “a reasonable opportunity to come into compliance.”

Section 114 of Subtitle A requires the Federal banking agencies, the National Credit Union Administration and the Federal Trade Commission (FTC) to develop regulations to combat identity theft. Since the techniques used to perpetuate the crime

are amorphous, the Committee recommends that the “guidelines should be a general outline.” The regulations will apply to financial institutions and any other person that is a creditor or other user of a consumer report, and require the entities to develop “reasonable policies and procedures” to protect consumers from identity theft. Section 114 also requires the aforementioned regulatory authorities to develop regulations on credit and debit card issuers to reduce the likelihood that a consumer would fall victim to identity fraud.

#### ***SUBTITLE B – PROTECTION AND RESTORATION OF IDENTITY THEFT VICTIM CREDIT HISTORY***

This Subtitle requires the FTC, in consultation with the Federal banking agencies and the National Credit Union Administration, to develop a model summary of rights for consumers with respect to the procedures for remedying the effects of fraud or identity theft, and requires consumer reporting agencies to provide consumers with a copy of the model. The FTC further is required to implement a media campaign to assist consumers in preventing identity theft.

Section 152 of this Subtitle helps consumers who have been victims of identity theft: they may direct consumer reporting agencies to block the reporting of information relating to accounts associated with the alleged identity theft activity; certain exceptions are provided for consumer report resellers and check servicing companies.

This Subtitle also helps victims of identity theft “clean up” the damage caused by the identity theft. National credit reporting agencies will be required to develop and maintain procedures to refer consumer complaints relating to identity theft to other credit reporting agencies. Furnishers of credit will be required to implement procedures to prevent the refurnishing of information that may be sullied by identity theft and to conduct investigations of identity theft-related disputes raised directly with them by consumers.

Additionally, debt collectors will be required to alert third parties, when acting on their behalf, that the debt they are attempting to collect may be the result of identity theft, if an identity theft report has been filed.

### **TITLE II – IMPROVEMENTS IN USE OF CONSUMER ACCESS TO CREDIT INFORMATION**

Section 211 requires consumer reporting agencies to provide an annual free credit report within 15 days from the date of a request from an individual by mail or through an Internet web site through a centralized system established by a new FTC rule. The centralized system shall allow consumers to obtain free reports from all three agencies using a single request. This section also requires the FTC to prepare and actively publicize a summary of FCRA-provided consumers’ rights.

Further, consumer reporting agencies will be required to disclose, upon consumer request and in connection with an application for an extension of consumer credit secured by a dwelling (such as a home equity loan), specific credit scoring information relating to how the consumer's credit scoring assessment was reached. The section also requires entities that provide credit collateralized by a dwelling to provide consumers with the information provided by the credit reporting agencies and the sources and kinds of data used to generate credit scores.

Section 213 of this Subtitle directs the FTC, in consultation with the federal banking agencies and the NCUA, to promulgate rules with respect to the contents of solicitations generated from the use of "pre-screened" lists to make it easier for consumers to opt-out of such solicitations. The FTC will be required to actively publicize the availability of the pre-screening opt-out.

Section 214 requires the Federal banking agencies, the National Credit Union Administration, and the FTC to coordinate and prescribe regulations on entities within each agency's respective jurisdiction to establish special rules for "solicitation for purposes of marketing." Essentially, an entity with common ownership or affiliated by corporate control with another entity that has a relationship with a consumer may not use information gained from their affiliated business to make a solicitation for marketing purposes without complying with the section's notice and opt-out requirements. Four particular situations are excluded from this provision:

1. A person using information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship;
2. A person using information to perform services on behalf of another person related by common ownership or affiliated by corporate control, except that such a person cannot send solicitations on behalf of another person who would not otherwise be permitted to send solicitations;
3. A person using information in direct response to a communication initiated by the consumer in which the consumer has requested information about a product or service; or
4. A person using information to directly respond to solicitations authorized or requested by the consumer.

The Subtitle also requires the FTC to study the economic and consumer effects of the use of credit scores and credit-based insurance scores.

### **TITLE III – ENHANCING THE ACCURACY OF CONSUMER REPORT INFORMATION**

The Managers' Amendment to this title would tighten the language to Section 311 to ensure that the relevant regulatory authorities are responsible for its enforcement. Under current law, a consumer is only provided an "adverse action" notice when the consumer does not qualify for credit or rejects a counteroffer made by a creditor. To

provide consumers with more information about their creditworthiness, this section would require the FTC and Board of Governors of the Federal Reserve System to jointly issue regulations that would require any user of a consumer credit report to “provide an oral, written, or electronic notice to the consumer” if the terms of credit offered to that consumer are “materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through the (entity).” The section also would require that the user of the credit report explain to the consumer that information contained in a credit report caused the less favorable terms of credit; to name the credit reporting agency that furnished the report; and to inform the consumer that he or she has the right to receive a copy of the report, and how to obtain it.

Section 312 requires the Federal banking agencies, the National Credit Union Administration and the FTC to promulgate regulations to improve the accuracy and completeness of the information furnished to credit reporting agencies. The Committee recognizes that these guidelines are to be updated as necessary to keep the best standards in place for the credit reporting system.

Section 313 requires the FTC to compile all complaints regarding incomplete or inaccurate credit report information and to transmit all such complaints to each consumer reporting agency involved.

Section 315 requires consumer reporting agencies, upon completion of a reinvestigation where information was determined to be inaccurate, incomplete, or unverified, to notify the furnisher of that information that such information was deleted; it also requires furnishers to modify the records furnished to the consumer reporting agencies as appropriate.

Section 316 requires consumer reporting agencies to provide users of consumer reports notice when the consumer address contained in the report differs substantially from the address provided by the user when the user requested the report. This section also requires the Federal banking agencies, the NCUA, and the FTC to require users of consumer reports to take measures to ensure the accuracy of the consumer addresses they are using.

## **TITLE IV – LIMITS ON SHARING OF MEDICAL INFORMATION**

Title IV prohibits the sharing of medical information among affiliates, including the sharing of an individualized list or description based on a consumer's payment transactions for medical products or services, or an aggregate list of consumers based on payment transactions for medical products or services.

This section also requires that medical information can only be reported if it is restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or nature of such services, products or devices to a person other than to the consumer, unless the information is being provided for a purpose relating to the business of insurance other than property or casualty insurance.

Additionally, this section prohibits creditors from obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer's eligibility or continued eligibility for credit.

This section also restricts any person who receives medical information by way of the exceptions from disclosing such information to any other person except as necessary to carry out the purpose for which it was originally disclosed.

This section prohibits a consumer reporting agency from furnishing a consumer report that contains medical information in connection with an insurance transaction unless the consumer affirmatively consents (opts-in) to the furnishing of the report. A report containing medical information may only be furnished for employment purposes or in connection with a credit transaction if the information to be furnished is relevant to, or affects, the employment or credit transaction, and the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished.

## **TITLE V – FINANCIAL LITERACY AND EDUCATION IMPROVEMENT ACT**

This title establishes the “Financial Literacy and Education Commission” with the Secretary of the Treasury as the Chairperson. The section sets forth the membership of the Commission to include federal agencies with significant financial literacy programs and authorizes the President to designate five additional members. The Commission will be tasked with the following:

1. Review of financial literacy and education efforts throughout the federal government;
2. Identifying and eliminating duplicative federal financial literacy efforts;
3. Coordination of the promotion of federal financial literacy efforts, including outreach between federal, state and local governments, non-profit organizations and private enterprises;
4. Development, within 18 months, of a national strategy to promote financial literacy and education among all Americans;
5. Providing an annual report, and testimony on the report, if requested; and
6. Establishing a website and a toll-free number as a one-stop-shop for all federal financial literacy programs.

The Commission will be empowered to hold hearings and receive testimony, receive information directly from any federal department or agency, and undertake periodic studies regarding the state of financial literacy.

## **TITLE VI – CLARIFICATION AND RELATION TO STATE LAW**

This section amends Sections 625(d) and eliminates the January 1, 2004 sunset provision contained in current law. That is to say that this law will permanently preempt state law relating to credit aggregation, segmentation, and reporting.

## **TITLE VII – MISCELLANEOUS**

Section 711 contains miscellaneous clerical amendments.

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### **Administration Position**

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There is no Administration Position on S. 1753 as of press time. The Office of Management and Budget offered its strong support for the passage of the House bill, H.R. 2622, noting that “the national credit reporting system has proven critical to the resilience of consumer spending and the overall economy.”

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### **Cost**

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The Congressional Budget Office (CBO) estimates that implementing this legislation would cost the federal government about \$13 million over the next five years, assuming appropriation of the necessary amounts. It also estimates that enacting this legislation would reduce revenues by \$4 million over the next five years. The bill could affect direct spending, but CBO estimates that any such impact would not be significant.

CBO notes that the bill would impose several private-sector mandates, as defined in UMRA, on consumer reporting agencies, individuals and businesses that print electronic credit card receipts, mortgage lenders, credit and debit card issuers, debt collection agencies, and certain companies affiliated by corporate control. CBO expects that the direct costs of those mandates would exceed the annual threshold for private-sector mandates (\$117 million in 2003, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

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### **Possible Amendments**

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(The specifics of each first-degree amendment will be shared when such information is made available). Note: The U.C. permits relevant second-degree amendments.

Boxer. Consumer Protection From False Affiliate Information Sharing.

Boxer. Right to Know What Affiliates Your Company Can Share Information With.



Boxer. Tightens Opt Out Marketing Loophole (sec 214).  
Cantwell. ID Theft.  
Corzine. Financial Institution to Notify FTC of Customer Data Breach.  
Dayton. National Information Sharing Standards.  
Durbin. Student Loan Payment Reporting.  
Feingold. Buy American.  
Feingold. Data Mining Reporting.  
Feinstein. Relevant.  
Feinstein. Relevant.  
Feinstein. Relevant.  
Kohl. Student Loans Credit Reporting.  
Lincoln/Pryor. Arkansas Usury Limit.  
Murkowski. Sharing Confidential Information.  
Nelson (Florida). Disposal of Consumer Financial Records.  
Sarbanes. Relevant.  
Sarbanes. Relevant.  
Schumer. Debit Card Fee Disclosure.  
Schumer. Economic Policy.  
Shelby. Relevant.  
Shelby. Relevant.  
Shelby/Sarbanes. Substitute.

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